

Office - Supreme Court, U.S.  
FILED  
AUG 29 1984  
ALEXANDER L. STEVAS,  
CLERK

No. 83-1250

In the Supreme Court of the United States  
October Term, 1983

KEWANEE OIL COMPANY,

*Petitioner,*

VS.

BARBARA HOLMES, Executor of the Estate of Elmer Holmes; EVELYN WOLKINS; SAM BAIER and BONNIE BAIER, His Wife; JAMES H. TRICE, JR., Trustee; and LAVON THOMPSON HOEFLER,  
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF KANSAS

BRIEF IN OPPOSITION TO BRIEF AMICI CURIAE  
OF AMERICAN PETROLEUM INSTITUTE, et al.

\*W. LUKE CHAPIN

CHAPIN & PENNY

P. O. Box 148

124 East Kansas

Medicine Lodge, Kansas 67104

(316) 886-5611

*Attorneys for Respondents*

Date: August, 1984

\*Counsel of Record.

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

BEST AVAILABLE COPY

## **TABLE OF CONTENTS**

Facts .....	1
Argument .....	3
Exhibit "A" Accounting .....	A-1

## **AUTHORITIES**

<i>Arkansas Louisiana Gas Co. v. Hall</i> , 101 S. Ct. 2925 (1981) 453 U. S. 571 .....	4
<i>Ashland Oil v. Good, et al.</i> , No. 83-1234 .....	1, 2
<i>Cities Service Oil v. Matzen, et al.</i> , No. 83-1278 .....	1, 2
<i>Mobil Oil v. Batchelder, et al.</i> , No. 83-1248 .....	1, 2
<i>Silkwood v. Kerr-McGee Corp.</i> , No. 81-259 (1-11-84) ....	3



No 83-1250

In the Supreme Court of the United States

October Term, 1983

---

KEWANEE OIL COMPANY,  
*Petitioner,*

VS.

BARBARA HOLMES, Executor of the Estate of Elmer Holmes; EVELYN WOLKINS; SAM BAIER and BONNIE BAIER, His Wife; JAMES H. TRICE, JR., Trustee; and LAVON THOMPSON HOEFLER,  
*Respondents.*

---

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF KANSAS

---

**BRIEF IN OPPOSITION TO BRIEF AMICI CURIAE  
OF AMERICAN PETROLEUM INSTITUTE, et al.**

---

**FACTS**

The American Petroleum Institute, the Kansas Independent Oil & Gas Association, the Mid-Continent Oil & Gas Association, the Rocky Mountain Oil & Gas Association and the Western Oil & Gas Association have filed brief in this small case combining it with brief in No. 83-1234, *Ashland Oil v. Good, et al.*; No. 83-1248, *Mobil Oil v. Batchelder, et al.*; and No. 83-1278, *Cities Service Oil v. Matzen, et al.*

The Solicitor General has filed Amicus Curiae Brief in the three cases last mentioned and not in this case, but on Page 7 of that brief the Solicitor General submits that this Court should either grant the petition in Kewanee together with petitions in the three cases and set the cases

for argument in tandem, or should defer disposition of the *Kewanee* petition pending the outcome of these three cases last mentioned.

Motion was made by petitioner, *Kewanee*, in March, 1984, to defer consideration of Petition for Writ of Certiorari in this case until petitions in the three cases last mentioned have been considered. Order has not been made on Motion to Defer, but neither has order been made denying or granting certiorari in this case.

Meanwhile, consideration of the three cases last above mentioned has been deferred pending settlement approval by the District Court in Kansas of settlements made by the parties, approximately \$50,000,000.00 in the *Mobil Oil* class action, \$15,000,000.00 in the *Ashland Oil* class action and \$35,000,000.00 in the other class actions.

The present case, the *Kewanee (Gulf)* case is not a class action but three separate actions by Barber County, Kansas, royalty owners involving ten oil and gas leases made in 1929 to 1936 covering a contiguous area in one township. (See Petition for Cert., Pages 20a-21a.) Three cases were consolidated for trial in District Court and for appeal to the Supreme Court of Kansas.

Of the \$272,391.68 judgment originally involved (Petition for Cert., Page 3a) only the amount involved from December 1, 1978, to date of judgment (November 1, 1981) is involved in this Petition for Cert. and that amount is \$87,292.25. (See Exhibit "A" hereto attached.)

We have just been informed that the multi-million dollar settlements made in the three other cases have been approved by the District Courts in Kansas. Consequently, we assume that the pending Petition for Cert. in those three cases, *Mobil Oil*, *Ashland Oil*, and *Cities Service, et al.*, will be dismissed.

## ARGUMENT

Amici, in their brief, assume facts not in evidence and not true, i.e.: (1) a 3/16ths royalty rather than 2/16ths would increase costs to the consumer; and/or (2) for producer to bear the additional 1/16th cost would eliminate incentive for maximum production.

Gulf's net profits exceed \$5,000,000.00 per day (1982 annual report). The decrease in net profits caused by this case (less than \$2,500.00 per month) would not even be noticed.

In one of the amicus briefs the case of *Silkwood v. Kerr-McGee Corp.*, No. 81-259, January 11, 1984, was quoted to the effect that:

"It is well settled that state action is invalid under the Supremacy Clause if it 'stands as an obstacle to the accomplishment of the full purposes and objectives of Congress'."

However, the general holding of the case was that state action is not invalid (particularly as to punitive damages) when it is not an obstacle to the accomplishment of the full purposes and objectives of Congress.

The same is true in this case. Congress, in NGPA, had no intention of controlling the amount of royalty payments that producers may make to their lessors or royalty owners.

In fact, most leases being written in the Barber County, Kansas, area at the present time are being written for royalties in excess of the old 1/8th or 12 1/2%.

Admittedly (Petition for Cert., Page 9), Gulf's royalty owner obligation under Kansas Supreme Court decision would increase 1/2 or to 3/16th rather than 2/16th or 1/8th. This still would leave Gulf substantial profit from the operation of their leases, 82.5% rather than 87.5% of total proceeds of sale. Hardly confiscatory. Undoubtedly not requiring a "drastically increased price" to the consumer as argued in the FERC Amicus Brief, Page 10, or to "eliminate incentive for continued maximum production" (same page) on account of less profit.

The increased royalty payments in these cases, the amount that is being paid for comparable gas from a comparable area in interstate commerce or intrastate commerce, would not decrease Gulf's net profits substantially. Gulf and its predecessor producers have received millions of dollars from their 7/8th share of gas produced over the last 30 to 40 years.

Amici contend that the case of *Arkansas Louisiana Gas Co. v. Hall*, 101 S. Ct. 2925 (1981), 453 U. S. 571 (*Arkla*) supports their position. Not so. *Arkla* was a case between a natural gas producer and an interstate pipeline. This case is by landowner lessors, royalty owners, against the gas producer, the lessee, based on terms of the oil and gas lease. This is clearly a matter for decision under state law, not federal law. A divided court, in *Arkla*, held that the "filed rate doctrine" prevailed and that damages constituting payment for more than the amount of filed rate could not be allowed. *Arkla* is far different than allowing royalty owners prevailing market rate according to their oil and gas leases.

Now that the cases involving millions of dollars have been settled and certiorari will not be granted, certiorari

should be denied on this little case involving interpretation of landowners' royalty rates.

Respectfully submitted,

W. LUKE CHAPIN  
CHAPIN & PENNY

P. O. Box 148  
124 East Kansas  
Medicine Lodge, Kansas 67104  
(316) 886-5611

*Attorneys for Respondents*

Date: August, 1984



**EXHIBIT "A"**

	Total Judgment 1-7-82 (Pet. 15a)	Accumu- lated Prior to 12-1-78	Amount Appealed from 12-1-78 to 11-1-81 (Pl. Ex. 1)
<b>Case No. 77C46</b>			
<b>Holmes "D"</b>			
Barbara Holmes	38,435.00	38,435.00	<u>-0-</u>
<b>Case No. 77C56</b>			
<b>Holmes "D"</b>			
Evelyn Wolkins	27,727.00	-0-	27,727.00
Barbara Holmes	39.00	39.00	<u>-0-</u>
<b>B. E. Holmes Lease</b>			
Barbara Holmes	1,102.00	1,102.00	<u>-0-</u>
Evelyn Wolkins	69.00	69.00	<u>27,727.00</u>
<b>Case No. 78C19</b>			
<b>J. C. McKee Lease</b>			
Sam & Bonnie Baier	112,823.00	63,962.00	48,861.00
<b>U. L. Thompson "A"</b>			
LaVon Hoefle	37,344.00	28,352.75	8,991.25
<b>U. L. Thompson "B", "C" and "D"</b>			
LaVon Hoefle	48,161.00	21,734.33	26,426.67
<b>J. H. Trice "E"</b>			
James H. Trice, Trustee	2,290.00	1,033.00	1,257.00
LaVon Hoefle	1,526.00	687.14	838.86
<b>Trice-Thompson Lease</b>			
James H. Trice, Trustee	1,224.00	831.50	392.50
LaVon Hoefle	1,632.00	1,107.03	<u>524.97</u>
	<u>272,372.00</u>		<u>87,292.25</u>